STATE OF NEW YORK
DEPARTMENT OF ENVIRONMENTAL CONSERVATION
625 BROADWAY
ALBANY, NEW YORK 12233-1010

In the Matter

- of –

the Alleged Violation of Article 9 of the
Environmental Conservation Law and
Part 196 of Title 6
of the Official Compilation of Codes, Rules and Regulations of the State of New York,

-by-

JAMES W. McCULLEY,

Respondent.

DEC Case No. R5-20050613-505

RULING OF THE ACTING COMMISSIONER

December 30, 2010

RULING OF THE ACTING COMMISSIONER

On May 19, 2009, Commissioner Alexander B. Grannis of the New York State Department of Environmental Conservation (Department or DEC) issued a decision and order (Order) in an administrative enforcement proceeding against respondent James W. McCulley. The Order addressed the alleged violation by respondent of section 196.1 of title 6 of the Official Compilation of Codes, Rules and Regulations of the State of New York (6 NYCRR), arising from his operation of a motor vehicle within the State forest preserve on a portion of Old Mountain Road in the Town of North Elba.

Subsequent to the issuance of the Order, Department staff moved, by papers dated June 5, 2009,[1] for clarification of five portions of the Order "to ensure proper implementation of Article 14 of the New York State Constitution, the Adirondack Park State Land Master Plan, Article 9 of the [Environmental Conservation Law], and the regulations promulgated pursuant thereto" (see Motion for Clarification, at 3-4). Department staff stated its belief that the Order "misapprehended or misapplied the applicable law" (see DEC transmittal letter, at 1). However, staff indicated that it was not seeking reversal of the dismissal of the action against respondent (id.).[2] Department staff also requested that, if the motion were granted, a briefing schedule should be established to allow for a "full statement" of issues that staff identified in its motion (id. at 3).

By letter dated June 11, 2009, Assistant Commissioner for Hearings and Mediation Services Louis A. Alexander established a schedule for filing of responses to Department staff's motion. By letter dated July 2, 2009, respondent opposed Department staff's motion on the grounds that (1) Department staff is not authorized to submit a post-order motion for "clarification," and (2) Department staff is not authorized to reargue points of law that were fully argued, litigated, and adjudicated in the administrative proceeding.

Two entities – the Adirondack Park Agency (APA) and the Adirondack Council – have petitioned to intervene. Under cover of a letter dated June 29, 2009, the Adirondack Council filed a petition and notice of motion to intervene in this matter for purposes of reargument and clarification of the Order. Attached to the Adirondack Council petition and notice of motion were a supporting affidavit of Brian Houseal, the executive director of the Adirondack Council, sworn to on June 25, 2009 (Houseal Affidavit), and an affirmation of Marc S. Gerstman, Esq., dated June 29, 2009 (Gerstman Affirmation). The Adirondack Council requested that it be

[1] Department staff's papers included a transmittal letter, a motion for clarification, and a notice of motion, all dated June 5, 2009. Under cover of a letter dated June 29, 2009, Department staff provided proof of service on respondent McCulley.

[2] Department staff reiterated this position in a letter dated September 29, 2009 in which it stated that it is not seeking reversal of the Order in Matter of McCulley, but that it is moving for clarification "of specific aspects of the [Order] based on what appeared to be discrete and rectifiable errors or ambiguities" (see Department staff letter dated September 29, 2009, at 2).

authorized to fully participate in the proceeding (see Houseal Affidavit, ¶ 25) and that the complaint be reinstated against respondent "for the sole purpose of re-establishing the underlying factual and legal record on which the Commissioner may determine whether to grant [the Adirondack Council and Department staff's motions]" (see Gerstman Affirmation, ¶ 8). Respondent, by letter dated July 10, 2009, opposed Adirondack Council's motion to intervene. The Adirondack Council responded by letter dated July 20, 2009.

By papers dated July 9, 2009, the APA moved to intervene, contending, among other things, that the Order failed to take into account the legal effect of the Adirondack Park State Land Master Plan. In addition, the APA sought the opportunity to "augment the record . . . with details regarding the 1987 Master Plan comprehensive update and its characterization of the former Old Mountain Road in the Sentinel Wilderness" (see Affirmation of John S. Banta in Support of the Petition and Motion to Intervene and Clarify [Banta Affirmation], at 5, ¶ 11). By letter dated July 23, 2009, respondent argued that the APA's petition and motion to intervene and clarify was unauthorized and untimely. Subsequently, Department staff, by letter of same date, argued that the APA met the standard for intervention in this proceeding and that its motion should be granted.

Subsequently, respondent filed a notice of motion and a letter-motion, dated September 8, 2009 (letter-motion), stating that the petitions of Adirondack Council and APA to intervene and for clarification should be stricken, Commissioner Grannis should be recused as decision maker in this proceeding, and all ex parte communications "from APA, DEC Staff, Adirondack Council and any other parties" should be disclosed immediately. Respondent filed a supplement, dated September 17, 2009, to its letter-motion. Responses to the letter-motion were submitted by Department staff by letters dated September 14, 2009, September 29, 2009, and October 5, 2009, the APA by letter dated October 1, 2009, and the Adirondack Council by letters dated September 11, 2009 and October 2, 2009.

Based upon my review of the record, Department staff's motion presents a sufficient basis for granting its motion for clarification. Accordingly, Department staff's motion is granted. In addition, the motion/petition of the Adirondack Council to intervene is granted in part, the motion/petition to intervene of the Adirondack Park Agency is granted, and respondent's letter-motion is denied. This granting of the motion for clarification does not in any way affect the dismissal of the enforcement action against respondent in the Order.

DISCUSSION

Authority Regarding Clarification in an Administrative Proceeding

A Commissioner's order issued pursuant to 6 NYCRR 622.18 represents a final action of the agency. In respondent's July 2, 2009 letter of opposition to Department staff's motion for clarification, he argues that Department staff is not authorized to submit a post-order motion for clarification. Respondent is in error. Although there is no express authority in Part 622 or the Environmental Conservation Law for the Department to reconsider an order or to entertain other post-order motion practice, the Commissioner has the inherent authority to clarify a final decision where the Commissioner deems it necessary and correct errors in law or fact in an underlying decision.

Clarification of an underlying decision has been addressed in a number of Department administrative proceedings (see, e.g., Matter of Department of Environmental Protection of the City of New York, Ruling of the Commissioner on Motion for Clarification and Partial Reconsideration, September 2, 2010, at 3; Matter of Village of Elbridge, [Commissioner] Ruling on Motion for Reconsideration, September 26, 1995, at 1 [Department has power to clarify its underlying decision or correct an error]; Matter of Charles Pierce, Sr., [Commissioner] Ruling on Motion for Reconsideration, June 9, 1995, at 1-2 [noting Commissioner rulings issued to clarify the meaning of the underlying decisions]). Matter of Konrad, Supplemental Decision of the Commissioner, October 13, 1992, at 1-2 [addressing Department staff's motion for clarification following issuance of a decision and modifying the rationale for the underlying decision]; Matter of Foster Wheeler-Broome County, Inc., Supplemental Decision of the Commissioner, July 16, 1992, at 1 [clarifying rationale of underlying decision]; Matter of Bitses, [Commissioner] Decision on Motion to Reargue, March 27, 1992 [although no basis exists for reconsideration, determining that clarification of the underlying order would be appropriate]). Reargument is also appropriate upon a showing that facts or the law were overlooked or misapprehended (see, e.g., Mayer v. National Arts Club, 192 AD2d 863, 865 [3d Dept 1993]; see also CPLR 2221[d]).

Proposed Issues for Clarification

Department staff, in its motion for clarification, identifies portions of the Order for which it seeks clarification:

1) Town Obligations. Department staff seeks to clarify the obligations of the Town of Keene and the Town of North Elba, as discussed in the Order starting on page 5, to improve and maintain Old Mountain Road (see Motion for Clarification, at 1, ¶ 1);

2) ATV and Snowmobile Use of Old Mountain Road. Department staff seeks clarification of language on page 5 of the Order in order "to eliminate any implication that ATV or snowmobile use of highways is lawful where a town has not opened the highway" (see Motion for Clarification, at 2, ¶ 2);

3) Criteria for statutory abandonment. Department staff seeks clarification of that portion of the Order that states "the road is deemed abandoned when the town superintendent, based on written consent of the town board majority, files a description of the highway abandoned with the town clerk" (see Motion for Clarification, at 2, ¶ 3; see also Order, at 3);

4) Hiking, snowshoeing, and skiing. Department staff seeks clarification of the extent to which hiking, skiing, snowshoeing, and similar recreational uses promoted by the Department pursuant to the Adirondack Park State Land Master Plan and/or Unit Management Plans are indications of "travel or use as a highway" under section 205(1) of the Highway Law (see Motion for Clarification, at 2-3, ¶ 4); and

5) Dismissal of staff's case as a matter of law. Department staff seek clarification regarding the language used in the Order with respect to staff's failure to meet its burden of proof and the language used in the hearing report with respect to the dismissal of the action "as a matter of law" (see Motion for Clarification, at 3, ¶ 5).

Respondent argues that Department staff should not be authorized to reargue points of law that were "fully argued, litigated and adjudicated" in the administrative enforcement proceeding (see Respondent letter in opposition to motion for clarification dated July 2, 2009, at 3). Respondent misconstrues Department staff's motion. Department staff is seeking to clarify language in the Order that may need explication to (a) address perceived ambiguities; (b) address any misapprehending or overlooking of applicable law or governmental policy (see, e.g., determinations set forth in the Adirondack Park State Land Master Plan relative to Old Mountain Road); (c) ensure a clear understanding of the intent and scope of language used in the Order; and (d) clarify the interrelationship of legal language that appears in the Order with that in the underlying hearing report (see Motion for Clarification, at 3, ¶ 5).

The Adirondack Council, in its papers, requests reinstatement of the notice of hearing and complaint against respondent "for the sole purpose of re-establishing the underlying factual and legal record on which the Commissioner may determine whether to grant [the Adirondack Council's motion] and the Motion to Clarify/Reargue the [Order] filed by DEC Staff" (see Gerstman Affirmation, at ¶ 8). For purposes of deciding this motion and to allow the opportunity for the parties to brief the matters to be clarified, Adirondack Council's request is unnecessary and, accordingly, denied.

Upon review of the record in light of the five points for clarification that Department staff raise, and recognizing the significance of these points for an understanding of the Order and its future application, I conclude that granting Department staff's motion is warranted and appropriate.

Petitions to Intervene

As noted, the Adirondack Park Agency and the Adirondack Council have petitioned to intervene in the proceeding at this time. The uniform enforcement hearing procedures in 6 NYCRR part 622 establish the standards for intervention in an enforcement proceeding. Section 622.10(f) provides as follows:

> "(1) At any time after the institution of a proceeding, the commissioner or the ALJ, upon receipt of a verified petition in writing and for good cause shown, may permit a person to intervene as a party.
>
> "(2) The petition of any person desiring to intervene as a party must state with preciseness and particularity:
>
> (i) the petitioner's relationship to the matters involved;
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> (ii) the nature of the material petitioner intends to present in evidence;
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> (iii) the nature of the argument petitioner intends to make; and
>
> (iv) any other reason that the petitioner should be allowed to intervene.
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> "(3) Intervention will only be granted where it is demonstrated that there is a reasonable likelihood that the petitioner's private rights would be substantially adversely affected by the relief requested and that those rights cannot be adequately represented by the parties to the hearing."

A plain reading of 6 NYCRR 622.10(f)(3) indicates that persons seeking to intervene in an enforcement proceeding must satisfy three requirements: (1) that they have private rights; (2) that there is a reasonable likelihood that these rights would be substantially adversely affected by the relief requested; and (3) that these rights cannot be adequately represented by the parties to the hearing (see Matter of Town of Riverhead, Ruling [of the Commissioner] on Motion of an Expedited Appeal, November 20, 2000, at 5; see also DEC Part 622/Part 624 Comments/Response Document, December 1993, at 8 [with respect to 6 NYCRR 622.10[f] [in an enforcement proceeding, "(w)here a person's interest is likely to be affected by the adjudication and will not be adequately represented by the parties then intervention is appropriate and will be granted"]).

Intervention has been allowed in other enforcement proceedings (see Matter of Jurgielewicz, ALJ's Ruling on Motion for Order Without Hearing and Petition to Intervene, April 29, 2010, at 58-61 [granting in part Save the Forge River, Inc.'s petition to intervene]); Matter of Karta Corporation, Ruling of the Chief Administrative Law Judge on Motion to Intervene, October 17, 2007 [granting Tarrytown R&T Corporation's petition to intervene]). As discussed below, granting intervention to the Adirondack Park Agency and the Adirondack

Council is appropriate here. Both entities have made a sufficient demonstration of good cause to warrant exercising discretion in favor of granting their motions to intervene.

-Adirondack Park Agency

The APA was created in 1971 by the New York State Legislature to develop long-range land use plans for both public and private lands within the boundary of the Adirondack Park. In June 1972, the APA submitted to the Governor the master plan for management of State lands, which the Governor approved in July 1972. Pursuant to Executive Law § 816, the APA is charged with the responsibility for the administration of the Master Plan, in consultation with the Department.

In its papers, the APA outlines its statutory and jurisdictional interests that support its petition for intervention. It notes, for example, the relationship of the Master Plan to the issue of the status of old roads within the Adirondack Park. It contends that the Order fails to take into account the legal effect of the Adirondack Park State Land Master Plan, including the 1979 and 1987 Master Plans, in addressing whether Old Mountain Road was closed (see Banta Affirmation, at 2, ¶ 3), and that this constitutes an error of law. The APA further outlines the application of relevant precedent addressing the Forest Preserve and non-Forest Preserve areas, as well as issues relating to the Sentinel Range Wilderness Area, which includes Old Mountain Road.

Respondent opposes the APA's motion to intervene (see Respondent letter dated July 23, 2009). He argues that the requirements for intervention, as set forth in 6 NYCRR part 622, relate to an intervenor's "private rights," and that the APA as a state agency is "incapable of having or possessing" those rights (id. at 2). Respondent's "private rights" argument is rejected. For purposes of the regulations governing intervention in an administrative enforcement proceeding, "private rights" relate to those rights that are unique or particular to that entity. The word "private" does not operate to exclude governmental entities from the right to intervene. Indeed, intervention has been granted to public entities in the Department's administrative enforcement proceedings (see, e.g, Matter of Hanaburgh, ALJ Ruling on Liability and Party Status, September 29, 2006 [allowing a town to intervene]; Matter of Mohawk Valley Organics, LLC, ALJ Ruling on Petition to Intervene, April 11, 2003, at 3 [determining that governmental entity has a private right under 6 NYCRR 622.10]). The APA clearly has private rights relating to its governmental function in the management of State lands under the Adirondack Park State Land Master Plan, including the classification of lands in the Adirondack Park and the implementation of the Master Plan. Furthermore, the APA has, in the Master Plan, made determinations about the status of Old Mountain Road.

Respondent also argues that the motion must be denied on the ground that reconsideration is not permissible pursuant to the standards in CPLR 5015. In this instance,

however, what is pending before me is whether to allow for clarification of the underlying order, and not reconsideration of respondent's liability for his activities on Old Mountain Road.

There is a reasonable likelihood that APA's rights would be adversely affected absent clarification of the Order. The APA's statutory interests, as well as its interests related to the Master Plan, would not be adequately represented by other parties. Accordingly, its petition to intervene is granted.

-Adirondack Council

The Adirondack Council comprises over 18,000 members and "is the largest citizen environmental group working full-time on Adirondack issues" (Houseal Affidavit, at ¶ 10). It advocates for land use planning within the Adirondack Park, conducts educational and outreach efforts relating to the Adirondack Park, and monitors various Park-related issues. Its membership includes individual property owners and taxpayers in all of the counties encompassed by the Adirondack Park, as well as others who recreate in that area.

The Adirondack Council's papers outline the material social, economic, and environmental interests relating to the Adirondack Park that it contends would be substantially and adversely affected by the Order. The Adirondack Council has been long involved on issues related to protecting wilderness and wild forest lands in the Forest Preserve and to motorized vehicle use in the Forest Preserve, and has developed a strategic plan which includes matters relating to the stewardship of lands in the Adirondack Park (see Houseal Affidavit, ¶ 11). The Adirondack Council notes the unique nature of this administrative proceeding, the broad implications to regulations and policies governing lands within the Forest Preserve and motorized use in the Adirondack Park, and the adverse impacts on its members.

Respondent argues that the motion of the Adirondack Council is untimely, on the ground that a party may only intervene prior to a hearing. To support its contention, respondent cites to the intervention provisions of 6 NYCRR part 622, which states that intervention will only be granted where it is demonstrated that there is a reasonable likelihood that the petitioner's private rights "cannot be adequately represented by the parties to the hearing" (see 6 NYCRR 622.10[f][3]). Respondent's constricted reading of the regulations is rejected. That the Adirondack Council did not seek to intervene at prior stages of the proceeding does not, under the circumstances here where a motion for clarification has been filed, preclude the Adirondack Council from petitioning for intervention.[3]

Respondent also contends that the Adirondack Council will not be substantially adversely affected by the Order. The petition of the Adirondack Council, however, fully demonstrates reasonable likelihood of substantially adverse impacts relative to the organization and its membership, and respondent's contention is rejected. Finally, respondent maintains that no legal

[3] Respondent's argument that the APA motion is untimely is similarly rejected for the reasons discussed.

authority exists to seek clarification of the Order. However, as previously discussed, the Commissioner has the inherent authority to allow for clarification of an underlying order.

Based upon my review of the papers, the Adirondack Council has demonstrated that it has private rights that support its petition for intervention (see, e.g., Gerstman Affirmation, at ¶¶ 9, 19-24). It has demonstrated that there is a reasonable likelihood that those rights would be substantially adversely affected by the Order. Finally, the rights of the Adirondack Council are separate from, and not necessarily congruent with, the interests of the two governmental entities, the DEC and the APA. Its participation would ensure that its interests are adequately represented.[4]

Accordingly, I grant the petition of the Adirondack Council to intervene. However, the petition of the Adirondack Council appears to put forward additional issues beyond those contained in Department staff's motion for clarification. To the extent that the Adirondack Council is raising additional issues, those will not be considered in this proceeding.

Recusal

In light of Commissioner Grannis's departure from the Department, respondent's letter-motion dated September 8, 2009 to recuse Commissioner Grannis is moot. However, even if Mr. Grannis were still DEC Commissioner, respondent's recusal request would be denied.

The applicable authority that governs recusal of a presiding officer or decision maker has been comprehensively addressed in prior rulings (see, e.g., Matter of Crossroads Ventures, LLC, Ruling of the Commissioner on Motion to Recuse the Commissioner, April 29, 2009, at 3-7). Although prejudgment of the specific facts of a pending proceeding may require disqualification, mere familiarity with the facts without prejudgment does not require disqualification (see Matter of 1616 Second Ave. Rest., Inc. v New York State Liq. Auth., 75 NY2d 158, 162 [1989]).

In its motion, respondent fails to identify any ground for disqualification of Commissioner Grannis in this case, nor does any such ground exist. Respondent McCulley attached three records to his September 8, 2009 motion: (1) a letter dated June 3, 2009 from Curtis F. Stiles, Chairman of the APA, to Commissioner Grannis (Stiles letter); (2) a letter dated June 1, 2009 from Brian L. Houseal, Executive Director of the Adirondack Council, to Commissioner Grannis (Houseal letter); and (3) a DEC Office of General Counsel litigation advisory to Commissioner Grannis, dated March 6, 2009, addressing litigation commenced by respondent McCulley against the Department.

Both the Stiles and Houseal letters were sent to the Commissioner after the issuance of the Order on May 19, 2009, at a time when no adjudicatory proceeding was pending in this

[4] At this stage of the proceeding, the Adirondack Council is essentially coming in as an amicus party. Its participation is being allowed for the purpose of providing written argument upon the clarification points that Department staff has raised.

matter. Department staff did not move for clarification until June 5, 2009. Accordingly, the communications at issue, which were sent on June 1, 2009 and June 3, 2009, do not constitute ex parte communications that would be a basis for recusal. Neither section 307 of the State Administrative Procedure Act nor the ex parte requirements set forth at 6 NYCRR 622.16 would prevent the Commissioner, under these circumstances, from receiving communications from Mr. Houseal or Mr. Stiles to the Commissioner or the Department subsequent to the issuance of the Order.[5]

Furthermore, the litigation advisory that was submitted to the Commissioner is not a communication that would warrant recusal. In fact, the litigation advisory explicitly states that it would not be discussing the merits of the underlying McCulley enforcement proceeding, in recognition of the Commissioner's decision making role. The litigation advisory did not discuss the facts of the pending administrative enforcement proceeding or any legal argument in that matter. It merely advised the Commissioner that respondent had commenced an article 78 proceeding against the Department and the Commissioner. Accordingly, the content of the litigation advisory does not constitute a basis for recusal.

Respondent also demanded that all ex parte communications in this matter by or from Commissioner Grannis, Chief Administrative Law Judge James T. McClymonds, Department staff, the Adirondack Park Agency, and the Adirondack Council be disclosed. As noted by Department staff, respondent had been provided documents by Department staff pursuant to a request under the New York State Freedom of Information Law, and it was not aware of any records relevant to respondent's request that had not been provided (see Department staff letter dated September 14, 2009, at 4).[6]

On September 17, 2009, respondent filed a supplement to its motion that included a summary and copies of communications that he had received pursuant to his Freedom of Information Law request. The supplement included copies of e-mail transmissions which respondent characterized as "containing improper and undisclosed ex parte communication" between Department employees and other persons or entities with respect to the administrative enforcement proceeding against Mr. McCulley (see Respondent letter dated September 17, 2009, at 2).

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[5] The papers filed in opposition to respondent's motion to recuse set forth sound legal authority that supports the determination that the communications do not represent impermissible ex parte communications that would require recusal (see Department staff letters dated September 14, 2009 and September 29, 2009; Adirondack Council letters dated September 11, 2009 and October 2, 2009; and Adirondack Park Agency letter dated October 1, 2009 [setting forth the lack of any basis under the State Administrative Procedure Act or other legal authority for recusal based on these communications]).

[6] Respondent also submitted Freedom of Information Law requests to the Department's Office of Hearings and Mediation Services (OHMS). Respondent was granted access to review releaseable records by OHMS (see letters dated July 7, 2009 and January 6, 2010 from Chief Administrative Law Judge James T. McClymonds to respondent). Respondent did not file any administrative appeal challenging the determination to withhold certain of the OHMS records pursuant to Public Officers Law § 87(2).

A review of the communications reveals that none of the Department employees that authored or received these communications were assigned to render a decision or to make findings of fact and conclusions of law in the administrative enforcement proceeding involving Mr. McCulley. Department staff provided, by letters dated September 29, 2010, and October 5, 2010, affidavits from various Department personnel who authored or received these communications confirming that they had never been assigned to render findings of fact or decisions of law in the administrative enforcement proceeding, nor have they made any of those determinations. Nothing in the materials submitted by respondent indicates any violation of the ex parte rules. Furthermore, respondent has not provided any support for his proposition that there was any prejudgment of the specific facts by the Commissioner, or any other violation of procedure in the administrative enforcement proceeding that would require recusal. In addition, respondent has not provided any support for his request that the motions and petitions of the APA and the Adirondack Council be stricken.

Other Issues

To the extent that respondent raises other issues or contentions in its papers in opposition to the motion for clarification and to the two petitions to intervene, or in his letter-motion, these have been considered and found to be lacking in merit.

Briefing Schedule

Based on the record before me, Department staff's motion for clarification and its request that a briefing schedule be established are granted. Briefing shall be limited to the five clarification items that Department staff set forth in its papers dated June 5, 2009. Respondent, the Adirondack Park Agency, and the Adirondack Council are authorized to file replies to the brief that Department staff files. The schedule for briefing is as follows:

- By **Friday, February 4, 2011**, Department staff shall file an original and two copies of its brief with the Office of the Commissioner (attn: Louis A. Alexander, Assistant Commissioner for Hearings and Mediation Services), NYSDEC, 625 Broadway, Albany, New York 12233-1010. Department staff shall serve one copy of its brief at the same time and in the same manner to respondent, to the Adirondack Park Agency, and to the Adirondack Council. The Department staff's brief must be received by the Office of the Commissioner and the other parties no later than 5:00 p.m. on that date.

- By **Friday, March 11, 2011**, respondent James W. McCulley, the Adirondack Park Agency, and the Adirondack Council shall file an original and two copies of their replies to Department staff's brief with the Office of the Commissioner, and serve one copy to Department staff and the other parties. Reply briefs must be

received by the Office of the Commissioner and the other parties no later than 5:00 p.m. on that date.

Service of papers by facsimile transmission (FAX) is not permitted. Papers may be served by electronic transmission, provided that the original and two copies are mailed to the Office of the Commissioner on the same date, and that a copy is also mailed to the respective parties on that date. For purposes of electronic transmission to the Office of the Commissioner, laalexan@gw.dec.state.ny.us is the e-mail address to use for filing of papers.

NEW YORK STATE DEPARTMENT OF
ENVIRONMENTAL CONSERVATION

By: _____/s/_____
Peter M. Iwanowicz
Acting Commissioner

Dated: December 30, 2010
Albany, New York